IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12627 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMIBEN WD/O. SANAJI MADHAJI THAKORE

Versus

O.N.G.C. LTD.

Appearance:

1. Special Civil Application No. 12627 of 2003

MR KRISHNA G PILLAI for Petitioner No. 1

MR KARTIK THAKAR for M/S TRIVEDI & GUPTA

for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 22/09/2004

ORAL JUDGEMENT

In this petition, the petitioner is challenging the order dated 20.7.1992, passed by the respondent, by which the husband of the petitioner is deemed to have resigned from service of ONGC with effect from 11.6.1992.

2. The short facts leading to this controversy is that the husband of the petitioner was working as Khalasi Grade-II with the respondent Corporation and had worked for about 25 years, when on 15.3.1992 he left from Chandkheda to Dakore on foot, but never returned to his house thereafter. The petitioner therefore, lodged complaint with Adalaj Police Station on 20.3.1992 and also informed the respondent about this. The respondent issued a notice on 6.5.1992 to the husband of the petitioner to explain his unauthorised absence. Since no reply was received, the respondent passed the impugned order on 20.7.1992, treating the husband of the petitioner to have deemed to have resigned from service.

3. The petitioner has in the petition further stated that the petitioner had informed the respondent once again in May, 1992 that her husband is missing and that necessary Police complaints have been lodged. The petitioner thereafter, approached the learned Civil Judge (Senior Division) Gandhinagar, for a necessary declaration that her husband is dead as she has not heard of anything about her husband Sanaji Madhaji Thakore for a period in excess of 7 years. The learned Civil Judge (Senior Division), Gandhinagar, by judgement and decree dated 6.2.2003, allowed the Suit of the petitioner and granted a declaration that the husband of the petitioner is not alive after 15.3.1992 and that he should be presumed dead after 15.3.1992. The petitioner also conveyed this order to the respondent.

4. The petitioner states that the respondent has erred in passing the impugned order Annexure "C". It is further contended that pursuant to the decree of the Civil Court, the petitioner is entitled to receive all service benefits on the basis as if husband of the petitioner had died while in service on 15.3.1992. It is stated that number of monetary benefits have not yet been paid to the petitioner.

5. Appearing in response to the notice issued, the respondent has filed an affidavit and through the learned Advocate contended that there are no dues outstanding and the petitioner is paid all amounts payable under the Rules. It is pointed out that the provident fund amounts have been paid and gratuity and earned leave entitlements have been adjusted towards the outstanding dues of the husband of the petitioner, since he had obtained certain loans which had remained unpaid. It is pointed out that before passing the impugned order at Annexure "C", two notices were also issued to the employee. The respondent

has also pointed out that for recovering the outstanding amount, a Civil Suit is already instituted.

6. Since the question of recovery is pending before the Civil Court as agreed by the learned Counsel for the parties, I do not express any opinion with respect to the said controversy.

7. From the record it clearly emerges that the husband of the petitioner was found missing after 15.3.1992 and was never heard of by the near relatives thereafter. The Civil Court has also considered this aspect of the matter and granted the declaration to the petitioner. Such a declaration however, could not have been made with effect from the date on which said person was found missing and has to be after a period of 7 years as required under the provisions of the Evidence Act. Despite the decree, since the respondent was not a party to the said Civil proceedings, the declaration made therein cannot bind the respondent. The request of the petitioner therefore to receive the service benefits on the basis that her husband had died after 15.3.1992 cannot be granted.

8. The order dated 20.7.1992 at Annexure "C" passed by the respondent however, cannot be sustained especially in view of subsequent developments. When the Civil Court has found that the husband of the petitioner was not heard of for a period in excess of 7 years, it would not be possible to sustain the impugned order at Annexure "C", by which the husband of the petitioner is deemed to have resigned from service. In the result, impugned order dated 20.7.1992 at Annexure "C" shall have to be quashed and the same is accordingly, quashed and set aside. The petitioner would be entitled to all benefits as if her husband had expired after a period of 7 years from 15.3.1992. In absence of sufficient data, it is not possible for this Court to quantify the amounts that may be required to be paid to the petitioner on the basis of above declaration. However, it is directed that if the petitioner is entitled to any further benefits on the basis of this declaration, the respondent shall pay to the petitioner all such benefits within a period of 8 weeks from the date of receipt of a copy of this order.

With these directions, the petition is disposed of. Rule is made absolute with no order as to costs. Direct service permitted.

(Akil Kureshi, J.)

*/Mohandas